

QUEENSLAND CIVIL AND ADMINISTRATIVE TRIBUNAL

CITATION: *Hoskin & Anor v Hinterland Outdoors Pty Ltd t/as
Hinterland Motorhomes GC* [2022] QCAT 373

PARTIES: **WILLIAM JAMES HOSKIN**
(applicant)

DEBORAH ANN HOSKIN
(applicant)

v

**HINTERLAND OUTDOORS PTY LTD T/AS
HINTERLAND MOTORHOMES GC**
(respondent)

APPLICATION NO/S: MVL188-21

MATTER TYPE: Motor vehicle matter

DELIVERED ON: 11 October 2022

HEARING DATE: 15 July 2022

HEARD AT: Brisbane

DECISION OF: Member Howe

ORDERS:

- 1. The applicants return the Avida Topaz Multi-terrain caravan registration number 408UDK to the respondent within 14 days of order.**
- 2. The respondent pay to the applicants the sum of \$94,989.99 within 14 days of order.**
- 3. Any party claiming costs must file and give to the other party an application for costs supported by evidence and written submissions within 14 days of order and the other party must file a response to such application within a further 14 days thereafter, and the application for costs shall be determined on the papers.**

CATCHWORDS: TRADE AND COMMERCE – COMPETITION, FAIR TRADING AND CONSUMER PROTECTION LEGISLATION – CONSUMER PROTECTION – GUARANTEES, CONDITIONS AND WARRANTIES IN CONSUMER TRANSACTIONS – GUARANTEES, CONDITIONS AND WARRANTIES – where a caravan had a water leak problem from about time of purchase – where the defect was known but the damage caused unknown for much of the time of ownership – where the water leak caused significant damage to the caravan – where the applicants rejected the caravan and asked for a

refund four years after purchase which was refused – where the applicants commenced proceedings in the Tribunal – where the extent of failure of the guarantee was only established by evidence of an expert filed in the proceedings – where the applicants were entitled to a refund of the purchase price without deduction for depreciation and use over four years

Competition and Consumer Act 2010 (Cth), Schedule 2 s 54

Vautin v BY Winddown, Inc (formerly Bertram Yachts) (No 4) [2018] FCA 426

Williams v Toyota Motor Corporation Australia Limited [2022] FCA 344

APPEARANCES & REPRESENTATION:

Applicants: Self-represented
Respondent: Self-represented by John Kerr

REASONS FOR DECISION

- [1] Mr and Mrs Hoskin, the applicants, purchased an Avida Topaz Multi-terrain caravan from Hinterland Motorhomes GC in 2016 for \$94,989.99. They took delivery on 24 February 2017.
- [2] The applicants give this history of the matter.
- [3] On first use of the caravan some few weeks later they discovered the caravan was leaking with water pooling on the kitchen benches, inside the cupboards and coming through the electrical channelling in the ceiling. They returned the caravan to the respondent's service department to have the problem fixed.
- [4] The they found the caravan leaking again in July 2017 and took the caravan back to the respondent for repair.
- [5] In August 2017 they again experienced rain and consequent water entry into the caravan. Again they returned the van to the respondent for investigation and repair.
- [6] The applicants didn't travel at all through 2018 save to take it to the respondent's service department for regular servicing. Otherwise the caravan was garaged under cover at their home. They recommenced holidaying in 2019 travelling for some 38 days, and then for another 57 days in 2020, all travel coinciding with fair weather.
- [7] On 26 January 2021, when preparing the van for travel, the applicants found extensive corrosion and rust in the underfloor metal sheeting of the caravan. They complained to the manufacturer, Avida. They sent photographs of the underfloor area.
- [8] On 28 January 2021 Avida replied confirming the corrosion and rust to the underfloor pictured in the photographs had been caused by water damage. Avida referred the applicants to an independent repairer, RnR Refinish.

- [9] On 3 February 2021 the applicants obtained a quotation from RnR Refinish of \$5,480.75 to remove everything including solar panels from the roof of the caravan and then to reseal the roof. RnR Refinish told them that there was no guarantee that that would fix the water entry problem however.
- [10] The applicants wrote to the respondent on 16 and 17 February 2021 requesting either that the caravan be repaired by RnR Refinish or that they be refunded their purchase price. In response the respondent said the vehicle warranty may be void because of the caravan had not been regularly serviced. The applicants pointed out that the basis of claim was breach of the guarantee of acceptable quality pursuant to s 54 of the *Competition and Consumer Act 2010* (Cth), Schedule 2 ('ACL'), not pursuant to a vehicle warranty.
- [11] The applicants returned the caravan to the respondent at the latter's request, rather than RnR Refinish, to fix the water problem and to have the damage done to the floor and undercarriage repaired. The respondent took some considerable time doing that. The applicants were told the repairs were finished on 1 June 2021 and they collected it on 4 June 2021. Work had been done to the floor and undercarriage but they were told that the service department had not been able find the source of the water leak. The applicants were told that if they, the applicants, found the leak, the respondent would fix it.
- [12] The applicants left Brisbane for a travelling holiday. They were in South Australia when they found the cupboards inside the caravan had pulled away from the walls and there was a crack in the shower base, and on 10 July 2021 they found the electric steps were no longer working.
- [13] Whilst in South Australia it also rained and they found the caravan was leaking again with water again coming into the electrical wiring channels on both sides of the ceiling.
- [14] They returned the caravan to the respondent on 27 July 2021 a final time and asked the respondent to fix the leak and the damage to the cupboards and shower and to repair the electric steps. The respondent said the steps could not be repaired until January 2022 and they couldn't fix the cupboards and shower because that would require major additional work, and there was no guarantee that new cupboards or a new shower could ever be fitted properly.
- [15] On 2 August 2021 the applicants asked for a refund of the purchase price. The letter requesting a refund detailed the problems experienced with the van from the time of the first water leak shortly after initial delivery and the known damage caused by that.
- [16] The respondent refused the request for a refund on 18 August 2021.
- [17] On 15 September 2021 the applicants commenced proceedings in the Tribunal seeking recovery of the purchase price of \$94,989.99.

The hearing

- [18] The applicants' history of problems with the caravan is not challenged by the respondent. Indeed Mr Kerr for the respondent conceded at hearing that the respondent was not denying the "obvious problems" with the van and he admitted

the respondent had tried to rectify the problems for the applicants on several occasions but it hadn't worked.¹

The expert's report

- [19] The applicants engaged Mr Marburg, a consulting mechanical engineer, to provide a report for the hearing. The report was scathing concerning the defects with the caravan. The report confirmed the complaints of the applicants. Mr Marburg concluded in his report:

In my professional opinion, the only course of action to rectify the water leakage situation is to completely dismantle the module and start again from the chassis up. Replacing the damaged cabinetry and shower will solve that particular problem, but the cause of the water leakage and inherent floor damage will not be rectified.²

- [20] He suggested continued use of the vehicle would only accelerate degradation because even if the cause of the water leak was found and fixed, water would remain inside the composite roof, walls and floor. He suggested the structural integrity of the module would rapidly decline and it would be unsafe to either inhabit or operate on public roads.
- [21] Again there is no challenge by the respondent to Mr Marburg's report or conclusions.³ I accept Mr Marburg's opinion, his report findings and conclusions.

The Australian Consumer Law

- [22] The applicants' claim, pursuant to s 54 of the ACL, is that the caravan supplied to them as consumers by the respondent as supplier was not of acceptable quality:

54 Guarantee as to acceptable quality

- (1) If:
- (a) a person supplies, in trade or commerce, goods to a consumer; and
 - (b) the supply does not occur by way of sale by auction;
- there is a guarantee that the goods are of acceptable quality.
- (2) Goods are of acceptable quality if they are as:
- (a) fit for all the purposes for which goods of that kind are commonly supplied; and
 - (b) acceptable in appearance and finish; and
 - (c) free from defects; and
 - (d) safe; and
 - (e) durable;

¹ Transcript Page 1-24 Line 24.

² Engineering Report on Caravan Avida Topaz Multi-Terrain, 19 February 2022 at 17.

³ T1-17 L36-42.

as a reasonable consumer fully acquainted with the state and condition of the goods (including any hidden defects of the goods), would regard as acceptable having regard to the matters in subsection (3).

- (3) The matters for the purposes of subsection (2) are:
- (a) the nature of the goods; and
 - (b) the price of the goods (if relevant); and
 - any statements made about the goods on any packaging or label on the goods; and
 - (c) any representation made about the goods by the supplier or manufacturer of the goods;
 - (d) any other relevant circumstances relating to the supply of the goods.

Not acceptable quality

- [23] I am satisfied that the guarantee as to acceptable quality applied in the sale of the caravan by the respondent to the applicants. I find the caravan was not of acceptable quality at time of sale. It was not free of defects, safe or durable as a reasonable consumer fully acquainted with the state and condition of the goods (including the water leak and damage caused by the leak) would regard as acceptable.
- [24] The caravan was expensive and waterproofing was an essential and fundamental requirement of such a product. It was not durable. The extent of the damage caused by the water entry problem is clearly identified by Mr Marburg in his report. All damage is linked to the water leak defect present from at or about the time of initial purchase.
- [25] There is no evidence that the failure of the applicants to have the caravan serviced at regular six monthly intervals as required by the service manual contributed to the water leak problem. That may have been a factor the respondent could rely upon to deny a claim made under a vehicle warranty claim, but vehicle warranties have nothing to do with the guarantee provisions of the ACL.

Major failure

- [26] By s 260 ACL:
- When a failure to comply with a guarantee is a major failure
- A failure to comply with a guarantee referred to in section 259(1)(b) that applies to a supply of goods is a major failure if:
- (a) the goods would not have been acquired by a reasonable consumer fully acquainted with the nature and extent of the failure;
- [27] I find the failure of the guarantee as to acceptable quality was a major failure. The water entry defect existed from time of purchase and the caravan would not have been acquired by a reasonable consumer fully acquainted with the nature and extent of the failure of the warranty.⁴

⁴ *Williams v Toyota Motor Corporation Australia Limited* [2022] FCA 344 [166].

[28] Further, as relevant below, I find the defect cannot be remedied. That is made clear by Mr Marburg and is not challenged by the respondent.

Remedies

[29] Where there is a major failure in respect of goods or the defect cannot be remedied, by s 259(3) of the ACL a consumer may:

- (a) subject to s 262, notify the supplier that the consumer rejects the goods and of the ground or grounds for the rejection; or
- (b) by action against the supplier, recover compensation for any reduction in the value of the goods below the price paid or payable by the consumer for the goods

[30] Section 262 provides:

(1) A consumer is not entitled, under section 259, to notify a supplier of goods that the consumer rejects the goods if:

- (a) the rejection period for the goods has ended; or

...

(2) The rejection period for goods is the period from the time of the supply of the goods to the consumer within which it would be reasonable to expect the relevant failure to comply with a guarantee referred to in section 259(1)(b) to become apparent having regard to:

- (a) the type of goods; and
- (b) the use to which a consumer is likely to put them; and
- (c) the length of time for which it is reasonable for them to be used; and
- (d) the amount of use to which it is reasonable for them to be put before such a failure becomes apparent.

[31] The rejection period commenced from the time of supply of the caravan and ended when it was reasonable to expect the failure to comply with the guarantee as to acceptable quality became apparent.

[32] When the damage to the metal floor sheeting was noticed in January 2021 the applicants sought the assistance of the manufacturer, Avida, to have the damage assessed and repaired under contractual warranty. That company referred them to RnR Refinish.

[33] RnR Refinish suggested resealing the roof but could not guarantee that that would fix the problem. But everyone perhaps hoped it would.

[34] The respondent did some resealing work instead of RnR Refinish but admitted on 4 June 2021 that they hadn't been able to identify the point of entry of the water leak.

[35] Through June to mid July 2021 when the applicants were travelling in South Australia, I determine it was not clear to applicants whether or not the leak had been fixed until there was rain and the caravan started leaking again. The respondent had done some repairs to the undercarriage and floor at that time but it was unclear how extensive the damage to the caravan was.

[36] On 2 August 2021 the applicants asked for a refund of the purchase price of the caravan. That was refused on 18 August 2021.

[37] The applicants commenced the within proceedings on 6 September 2021.

[38] Mr Marburg confirmed in his report of 19 February 2022 that the defect to the caravan had caused extensive damage and concluded that the only course of action to rectify the water leak problem was to completely dismantle the caravan and “start again from the chassis up”.

[39] In *Vautin v BY Winddown, Inc (formerly Bertram Yachts) (No 4)* [2018] FCA 426, Derrington J said:

... the section requires a sufficiently high level of certainty in relation to the knowledge of the relevant failure including its nature and extent and what it will cost to remediate it. If the level of knowledge required is as identified above, it follows that if there exists doubt about the consequences of a defect in an item and, therefore, the cost of repairing it, the failure of the statutory guarantee has not become apparent.⁵

...

It might have been argued that the rejection period ends under s 262 once it is reasonable to expect that the relevant failure can be seen to be a “major failure” within s 260. On such a construction, at that time the consumer will be aware that the defect is serious and they would be entitled to return the goods. However, such a construction tends to confine the rights of consumers and it is not consistent with *Nesbit v Porter*. Even where a consumer has become aware of the existence of a major failure and the right of rejection, they are still entitled to ascertain the nature and extent of the defect and how much it will cost to repair, before being put to an election.⁶

[40] Until Mr Marburg’s report there was still doubt as to whether or not the water leak problem was able to be resolved and what damage had been caused by it.

[41] It was therefore not “apparent” that the respondent had breached the guarantee as to acceptable quality prior to Mr Marburg’s report of 19 February 2022.⁷

[42] Whilst the applicants travelled reasonably long distances over the course of four years, most of that travel was done in fair weather and the water ingress problem and resultant damage was unknown to them for much of that time.

[43] I find the applicants were entitled to reject the caravan and claim a refund of the purchase price of \$94,989.99 on 2 August 2021. The rejection period had not ended.

[44] Whilst the respondent talked of depreciated value of a four or five year old caravan at hearing, there is no provision in the ACL for anything other than a full return of the purchase price. By s 263(4)(a)(i) of the ACL the supplier must refund “*any money paid by the consumer for the goods.*”

[45] By s 263(6) ACL the property in the caravan reverted in the respondent from date of notice of the rejection of the goods, which was 2 August 2021.

⁵ Ibid [265].

⁶ Ibid [269].

⁷ See *Vautin* at [274] – where the failure to comply with the guarantee was similarly not apparent as at time of trial.

- [46] By s 263(2) ACL the responsibility for returning goods to a supplier lies on the consumer unless, amongst other things, the goods cannot be returned or transported without significant cost to the consumer because of the nature of the failure to comply with the guarantee to which the rejection relates.
- [47] The respondent refused the request for a refund by the applicants. The applicants therefore did not attempt to return the caravan to the respondent, which is understandable given the refusal. They must do so now however. There is no evidence to suggest they cannot.

Damages if the right to reject the goods was lost

- [48] If the applicants were not entitled to reject the goods and claim a refund of the purchase price because the rejection period had expired, the applicants would in any case have an alternative claim available under s 259(3)(b) ACL. The alternative claim is an entitlement to recover compensation from the respondent for any reduction in the value of the goods below the price paid (because of the defect).
- [49] The cost of the caravan was \$94,989.99. I accept that was its value at time of purchase. There is no evidence suggesting otherwise.
- [50] The claim under s 259(3)(b) requires a calculation of the difference between the price paid and the reduced value of the goods to a purchaser assessed as at time of purchase, with the purchaser taken to know of the defect and any cost of rectification required.
- [51] As stated above, the depreciated value of the caravan as at date of hearing or when the extent of the defect becomes known to the consumer is irrelevant in the calculation of compensation under the ACL provisions.⁸
- [52] The only evidence about cost of rectification is given by Mr Marburg, who states that the only course of action to rectify the water leak problem is to completely dismantle the caravan and “start again from the chassis up.” That opinion was not challenged by the respondent.
- [53] There was no evidence adduced by the parties to suggest the caravan, with its significant water entry defect, had any salvage value. In the absence of evidence I make no finding about that.
- [54] I determine it follows that to rebuild the caravan from chassis up will equal if not exceed the value of the caravan as at date of purchase. Therefore the reduction in value that the applicants are entitled to claim pursuant to s 259(3)(b) is the equivalent of the purchase price, \$94,989.99.

Orders

- [55] The applicants must return the caravan to the respondent.
- [56] The respondent must refund the applicants the purchase price of \$94,989.99.
- [57] Any party claiming costs should make application.

⁸ Ibid [300]